

IN THE COURT OF APPEALS OF IOWA

No. 1-172 / 11-0127
Filed April 27, 2011

**IN THE INTEREST OF C.H.,
Minor Child,**

B.H., Father,
Appellant,

D.H., Mother,
Appellant.

Appeal from the Iowa District Court for Butler County, Peter B. Newell,
District Associate Judge.

A mother and father appeal from the order terminating their parental
rights. **AFFIRMED.**

Michael H. Bandy of Bandy Law Office, Waterloo, for appellant-father.

Elizabeth Biver of Papenheim Law Office, Parkersburg, for appellant-
mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant
Attorney General, Greg Lievens, County Attorney, and Martin Petersen, Assistant
County Attorney, for appellee.

Amy K. Swanson of Lawler & Swanson, P.L.C., Parkersburg, attorney and
guardian ad litem for minor child.

Considered by Sackett, C.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2011).

SACKETT, C.J.

A mother and father appeal¹ from the juvenile court order terminating their parental rights to one child. The mother contends the State did not prove the statutory grounds for termination, the court erred in finding aggravating circumstances to waive reasonable efforts, and termination would be detrimental to the child due to the closeness of the parent-child bond. The father contends the court should have deferred permanency for an additional six months. We affirm.

We review the termination of parental rights de novo. *In re C.S.*, 776 N.W.2d 297, 298 (Iowa Ct. App. 2009). The parent-child relationship is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct. 549, 554, 54 L. Ed. 2d 511, 519 (1978). The State has the burden of proving the grounds for termination by clear and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); Although we give weight to the juvenile court's findings of fact, we are not bound by them. *In re J.A.D.-F.*, 776 N.W.2d 879, 883 (Iowa Ct. App. 2009). If the juvenile court terminates a parent's rights on multiple statutory grounds, we may affirm if any ground is supported by clear and convincing evidence. *Id.* at 884. In determining whether to terminate, our primary considerations are the child's safety, the best placement for furthering

¹ Iowa Rule of Appellate Procedure 6.201(d) requires that petitions on appeal "substantially comply with form 5 in rule 6.1401." Neither party has set forth the "findings of fact or conclusions of law with which you disagree" as required by Iowa Rule of Appellate Procedure 6.1401–Form 5. (Effective May 27, 2010.) In addition, the father's statement that "During the termination hearing, evidence was presented as set out on pages 1 – 10 of the court's termination order" is not substantial compliance with the form's requirement to "state the material facts as they relate to the issues presented for appeal."

the long-term nurturing and growth of the child, and the physical, mental, and emotional condition and needs of the child. *P.L.*, 778 N.W.2d at 37, 39 (citing Iowa Code § 232.116(2) (2009)). We also consider whether any of the circumstances in section 232.116(3) allow the court not to terminate. *Id.* at 37-39; Iowa Code § 232.116(3) (2011).

The child, the seventh child of the mother and fourth of the father, was born prematurely in February of 2010 and ordered removed from her parents' care the day before her scheduled release from the hospital in April. At the time of the child's birth, termination proceedings were in progress concerning three of the six older siblings. Parental rights to those three children were terminated about a week after this child's removal. See *In re A.H.*, No. 10-0656 (Iowa Ct. App. July 14, 2010). The mother's three oldest children, from a previous marriage, had also been found in need of assistance, but now live with their father and are not at issue in this appeal.

The court terminated the father's parental rights under Iowa Code section 232.116(1)(e) and both parents' parental rights under section 232.116(1)(g) and (h).

Father. The father does not challenge the statutory grounds for termination. Accordingly, any such challenge is waived, and we affirm the statutory grounds for termination. The father contends the court should have deferred permanency "to allow the father time to bond with [the] child and time to demonstrate changes he has made during the pendency of the court's involvement." He points to nothing in the record that might form the basis for

deferring permanency and cites no relevant authority concerning deferring permanency. The record reveals this father has had ample opportunity to demonstrate he can be a parent, but he has failed to do so. In order to defer permanency, the court would have to determine “the need for removal of the child” would “no longer exist at the end of the additional six-month period” and be able to “enumerate the specific factors, conditions, or expected behavioral changes” that provide the basis for that determination. Iowa Code § 232.104(2)(b). “The future can be gleaned from evidence of [a parent’s] past performance and motivations.” *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2000). Looking at the father’s past performance and his failure to change during these proceedings, we cannot determine the child could be returned to his care if permanency were deferred for six months. See Iowa Code § 232.104(2)(b). We affirm the termination of the father’s parental rights.

Mother. The mother challenges the statutory grounds for termination. She contends the State did not prove the child could not be returned to her care, as set forth in section 232.116(1)(h)(4), or that she lacks the ability or willingness to respond to services and an additional period of rehabilitation would not correct her situation, as set forth in section 232.116(1)(g)(3)–(4).

A. At the time of the termination, the mother had been receiving services since 2004. The case worker testified the mother had attended all visits with the child and had participated in all the services offered, but the mother had neither internalized nor benefitted from the services. This is similar to the case worker’s

testimony at the August disposition hearing, that the mother was not invested in and had not profited from participation in services.

Throughout the pendency of this case and the juvenile cases involving the three older children, the mother repeatedly chose to associate with men who placed her children at risk. When the court terminated the mother's parental rights to the three older children in April of 2010, it found:

[The mother] has been unable to stop herself from being involved with individuals who pose a significant risk of harm to her children. The department detailed years of services which have been offered to [her]. Despite these services, she continues to choose relationships with abusive and dangerous men. She does not comprehend the danger that these individuals have posed to her children.

The father of the child in this case served time in prison for his conviction of domestic abuse assault, second offense. During his incarceration, the mother had an intimate relationship with a man who was investigated for sexual misconduct with a child. A founded report of child sexual abuse resulted. Even though the safety plan the mother agreed to prohibited contact between this man and the children, the mother continued the relationship and allowed him to care for her children. When the man was sent to jail, the mother resumed her relationship with this child's father, who had just been released from his incarceration.

We agree with the juvenile court's determination the child could not be returned to the mother's care at the time of the termination and that the mother had not responded to services and an additional period of time would not correct the situation. See Iowa Code § 232.116(1)(g), (h). We affirm the termination on these statutory grounds.

B. The mother further contends the State did not show by clear and convincing evidence that aggravated circumstances existed to waive reasonable efforts. She argues she was working hard to correct her situation and was improving her parenting skills and her mental health. The termination order refers back to the finding of aggravated circumstances and waiver of reasonable efforts that occurred in the dispositional order. The dispositional order noted that the mother had been receiving services since 2004, her home at the time of the hearing continued to be “in significant disrepair and ha[d] a strong odor of animal urine and a significant amount of trash on the front porch and yard,” the mother had failed to make progress despite the services offered over several years, and the mother’s parental rights to three older children had been terminated in April of 2010. The court also noted the mother clearly loved the child and she did participate in the services offered, but continued to make poor choices in relationships and tried to hide or conceal those relationships from the department. Although finding this a difficult case, the court found clear and convincing evidence “that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child’s removal.”

The goal of CINA proceedings is to improve parenting skills and maintain the parent-child relationship. *In re H.H.*, 528 N.W.2d 675, 677 (Iowa Ct. App. 1995). “There is a requirement that reasonable services be offered to preserve the family unit.” *In re L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). That requirement may be waived if the court determines by clear and convincing

evidence that aggravated circumstances exist. Iowa Code § 232.102(12). As noted above, the juvenile court, after a hearing, made such a determination and waived the requirement for continued reasonable efforts. Because no appeal was taken from that decision, the principles of res judicata bar this claim to the extent it refers to a lack of services after the waiver. See *In re D.S.*, 563 N.W.2d 12, 15 (Iowa Ct. App. 1997) (citing *In re Marriage of Guyer*, 522 N.W.2d 818, 821 (Iowa 1994)).

The mother's primary claim is that the court erred in determining that continued services would not correct the causes for the child's removal within a reasonable time. From our review of the record, we cannot agree. Years of services had not corrected the problems that caused the removal of the three older children or the child at issue here. We affirm the juvenile court's determination. We note also that the passage of time has confirmed the correctness of the court's determination. The department did not stop providing services after the court waived the reasonable efforts requirement in August. An additional four months of services before the termination hearing in January of 2011 did not change the mother's situation or put her in the position to have the child returned to her.

C. The mother also contends termination was not in the child's best interests because of the closeness of the parent-child bond. She states she and the child "are bonded and everyone involved in the case agrees that [she] loves [the child] and wants to be able to be a mother to her." The case worker testified there is no significant bond between the mother and child. The mother does not

contend, and does not point to any evidence in the record that, because of the closeness of the parent-child relationship, terminating her parental rights to this child would be detrimental to the child. See Iowa Code § 232.116(3)(c). We agree with the juvenile court's determination "termination would not be detrimental to the child." Accordingly, we affirm the court's decision this factor does not weigh against termination. We affirm the termination of the mother's parental rights on this ground.

AFFIRMED.